

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Gabriel Paniza	Team: Team # 8	CCRB Case #: 200515516	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/27/2005 2:35 PM	Location of Incident: § 87(2)(b)	Precinct: 32	18 Mo. SOL 6/27/2007	EO SOL 6/27/2007	
Date/Time CV Reported Tue, 12/27/2005 11:15 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 12/30/2005 12:03 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Dress	00910	933759	032 PCT
2. POF Melissa Clark	29494	932472	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Robert Dress	Abuse: PO Robert Dress stopped and questioned § 87(2)(b)	§ 87(2)(b)
B.POF Melissa Clark	Abuse: PO Melissa Clark stopped and questioned § 87(2)(b)	§ 87(2)(b)
C.POF Melissa Clark	Abuse: PO Melissa Clark frisked § 87(2)(b)	§ 87(2)(b)
D.POF Melissa Clark	Abuse: PO Melissa Clark searched § 87(2)(b)	§ 87(2)(b)

### Synopsis

On December 27, 2005 at around 4:30 PM § 87(2)(b) and her co-worker § 87(2)(b) were leaving work and closing up the management office at § 87(2)(b) in Manhattan when PO Robert Dress and PO Melissa Clark came to the office. They were with a tenant who complained that her air conditioner had been taken by building personnel. The officers asked § 87(2)(b) about the complaint, but § 87(2)(b) said she had no information and told the officers she had to leave to pick up her daughter. The two officers prevented § 87(2)(b) from leaving (**Allegations A, B**) and then PO Dress stated that § 87(2)(b) had pushed him near his gun. The two officers grabbed her, pushed her against a brick wall, and handcuffed her. § 87(2)(b) suggested they return to the management office, and once in the office PO Clark frisked § 87(2)(b) (**Allegation C**) and then took out § 87(2)(b)'s ID out of her bag after § 87(2)(b) told her it was in her bag (**Allegation D**). The officers then walked § 87(2)(b) outside and released her from the handcuffs. Later that day § 87(2)(b) went to the 32<sup>nd</sup> Precinct to lodge a complaint against PO Dress and PO Clark. She saw the two officers at the precinct and pointed them out to the officers writing up the complaint.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) first filed her complaint on December 27, 2005 at the 32<sup>nd</sup> Precinct (encl. 10). The police department forwarded the complaint to the CCRB and it was received on December 30, 2005. § 87(2)(b) is a § 87(2)(b)-old Hispanic female, 5'2", 137 pounds, with black hair and eyes. On January 5, 2006 § 87(2)(b) gave an initial telephonic statement to the CCRB (encl. 11), and was interviewed in person on February 21, 2006 (encl. 12). § 87(2)(g)

Any mayor inconsistencies are noted in the narrative.

On Tuesday, December 27, 2005 § 87(2)(b) property manager at § 87(2)(b) was approached by one of her tenants, § 87(2)(b) who told § 87(2)(b) that an air conditioner she had left out on the hallway was gone, and she was asking § 87(2)(b) where it was and if building staff had taken it. § 87(2)(b) explained that perhaps it was taken away to the basement but that there was nothing § 87(2)(b) could do. At around 4:30 PM § 87(2)(b) and the building bookkeeper, § 87(2)(b) were getting ready to leave the office for the day when they heard someone knocking at the door and saw a pair of police officers outside the management office with § 87(2)(b). PO1 was a male White officer, around 5'6", 175 pounds, with very light skin, small eyes, and a shaved head. PO2 was a Black female, around 5'5", chubby, and red hair. PO1 was using his "stick" to bang on the metal door. During the subsequent investigation PO1 was identified as PO Robert Dress and PO2 was identified as PO Melissa Clark.

§ 87(2)(b) and § 87(2)(b) met up with PO Dress and PO Clark at the door to the office. PO Dress told § 87(2)(b) that they were there to respond to a complaint by § 87(2)(b) and described the problem. § 87(2)(b) explained that the staff was gone for the day, and that § 87(2)(b) would have to wait until the next day, at which time § 87(2)(b) would investigate, and that the air conditioner was probably in the basement. The police officers stated that as the property manager she had to give them the information of which porter it was. § 87(2)(b) stated that she would not know which porter took it, and PO Dress got agitated and stated that § 87(2)(b) was interfering with a police investigation. § 87(2)(b) explained that she had no more information. PO Dress asked for the name of the porter, and § 87(2)(b) stated she did not know. PO Dress again stated she was interfering and asked why she did not know the name of the porter. § 87(2)(b) stated she had to go to pick up her daughter because it was getting dark at that time. § 87(2)(b) explained that it was the superintendent that assigned porters, and § 87(2)(b) did not have the information. PO Dress stated that he had to respond to his boss, and that she could not go anywhere without giving him the information. § 87(2)(b) left the scene. PO Dress asked if the building had a camera system, and § 87(2)(b) explained that they had cameras in the lobby but not the hallways.

At this point § 87(2)(b) and § 87(2)(b) left the management office, and § 87(2)(b) began to walk towards the set of doors that open to the rear courtyard of the building. These doors are visible to anyone in the lobby or the elevator bank. The exit comprises of a set of glass doors with a small foyer in

between, which is visible to the people in the lobby through a glass wall. PO Clark walked in front of § 87(2)(b) while PO Dress walked behind her and § 87(2)(b) behind the group. PO Clark stopped at the outer door, keeping it closed. § 87(2)(b) was behind PO Clark in the small foyer with PO Dress behind § 87(2)(b) holding the inner door halfway open. § 87(2)(b) had to back up because PO Clark was holding the door closed. PO Clark said that § 87(2)(b) was not going anywhere (**Allegations A, B**). PO Dress then began to ask § 87(2)(b) about the security measures of the building and stated that as a manager § 87(2)(b) had to respond to the tenants about things missing. § 87(2)(b) stated that that was not building policy. At this point PO Dress asked § 87(2)(b) to show him her ID. § 87(2)(b) asked why, and PO Dress asked how she was going to be driving without ID. PO Dress then pushed the inner door open a little bit more, and at this point claimed that § 87(2)(b) had touched his gun. PO Dress then told PO Clark to handcuff § 87(2)(b). § 87(2)(b) stated that no part of her body made contact with PO Dress, but that possibly her large bag, which she had hanging down her right shoulder, could have touched the officer in the crowded space.

§ 87(2)(b) asked why they were doing this to her, why they were treating her like a criminal, and one officer said that is what she was then. § 87(2)(b) who was behind PO Dress, asked the officer why they were doing what they were doing. § 87(2)(b) recommended they return to the management office. This was going on in view of several tenants who were congregating near the elevator banks to see what was going on. PO Dress stated he would handcuff her—they took her outside the foyer and, with one officer on each side, they put her against a brick wall next to the inner door and the officers handcuffed § 87(2)(b)'s hands behind her back. § 87(2)(b) could feel the bricks on her face. PO Dress said that they would return to the office and stated that she had touched his gun and pushed him, and § 87(2)(b) asked the officer why he was saying that, that it was not true. PO Clark stated that § 87(2)(b) was very lucky. Once inside the management office, PO Dress asked § 87(2)(b) if she had taken her medications. § 87(2)(b) asked what medications, and said she was not crazy. PO Dress then asked if she needed to go to the hospital. § 87(2)(b) sat down, and PO Dress stated that she was lucky, that he could take her in, and § 87(2)(b) asked what the charges would be, and asked PO Dress why he was treating her as a criminal. PO Dress stated that that was what § 87(2)(b) was at that time. After questioning it was still unclear if this was the same exchange § 87(2)(b) mentioned when she was being handcuffed.

PO Dress told her that she had not been cooperating, and that they could take her in. § 87(2)(b) said the officers would have to tell her the charges, that she could see no reason for the officers to take her out of the office handcuffed. PO Clark began to frisk § 87(2)(b)'s pockets (**Allegation C**), and then moved to search § 87(2)(b)'s bag after § 87(2)(b) explained that her ID was in her bag (**Allegation D**). In her telephonic statement § 87(2)(b) did not mention a frisk. PO Clark went through her bag, asking what the items were, and then took out § 87(2)(b)'s pocketbook to get her ID. After this search PO Dress stated that they would take § 87(2)(b) outside the office and release the handcuffs outside. § 87(2)(b) asked the officers why they were doing this. § 87(2)(b) stated again that she had to pick up her daughter, and PO Clark asked her who would pick her daughter up if they took her in. § 87(2)(b) asked why they had to take her out to take the cuffs off, and PO Dress stated that she could be dangerous and hurt someone in there. § 87(2)(b) then asked § 87(2)(b) to just do what the officers told her to do. They left the offices; the officers took her to an area near the elevator bank. PO Clark released the handcuffs; PO Dress was laughing and teasing her. § 87(2)(b) did not elaborate on how he was teasing her.

§ 87(2)(b) left the building and went to pick up her daughter. After picking up her daughter she went to the precinct. When she arrived at around 5:50 PM there she asked whom she had to speak to about the incident. § 87(2)(b) spoke with a tall White female officer who told her she was a supervisor. At that time PO Dress and PO Clark appeared in the precinct. § 87(2)(b) pointed out the two officers to the supervisor and said it was them. The supervisor took the officers to a room and spoke with them. She then came back and asked § 87(2)(b) to tell her the story. § 87(2)(b) explained her story, then the supervisor explained that the officers claimed she had been violent and that was the reason for their actions. § 87(2)(b) asked how she had been violent, and the supervisor said it was because she had failed to provide her ID. § 87(2)(b) asked the secretary helping her to fill out the paperwork the names of the officers. The secretary would not tell her the names. § 87(2)(b) did see the secretary write down the names of Clark and Dress, and she took down those names. Later, one tenant, § 87(2)(b) came and asked her if she was okay, and § 87(2)(b) found out § 87(2)(b) had seen the incident and was willing to be a witness.

### Results of Investigation

#### **Layout of § 87(2)(b)**

A site visit of § 87(2)(b) was conducted on June 22, 2006 and photographs of the incident location taken (encl. 6). The entrance to the building is on § 87(2)(b). In the front lobby is a manned security desk, next to mailboxes. Further inside the building is a thin hallway next to the elevator bays. Beyond the elevator bays lies the rear lobby. A double set of glass doors with a small space in between them leads to a courtyard and parking area behind the building. To the right of these doors when facing towards § 87(2)(b) is the management office, between the community room and an exit staircase. The management office has a sign posted indicating the business hours. From Monday through Friday the office closes at 4:30PM.

#### **Witness statement – § 87(2)(b)**

§ 87(2)(b) is a Black female who lives at § 87(2)(b). A telephonic statement from § 87(2)(b) was obtained on April 7, 2006 (encl. 13). § 87(2)(b) was interviewed in person on July 18, 2006 (encl. 14). § 87(2)(g)

On Tuesday, December 27, 2005 at around 4:30 PM § 87(2)(b) came into the lobby of § 87(2)(b). She then noticed something was going on near a set of doors that lead outside the building. § 87(2)(b) went next to the elevators, which are about ten feet away from the set of doors. There were a couple of other females also standing by the elevator. In the space between the doors § 87(2)(b) could see § 87(2)(b) the building manager, and two police officers. Standing nearby was § 87(2)(b) § 87(2)(b)'s assistant. § 87(2)(b) might have had a bag with her, § 87(2)(b) did not recall. PO1 was a White male, approximately 5'7" or 5'8", slim build. PO2 was a Black female, with a stocky, well-developed build. Both officers were wearing their caps, so § 87(2)(b) could not see their hair, though she thinks PO2 might have had brown hair. During the subsequent investigation PO1 was identified as PO Robert Dress and PO2 was identified as PO Melissa Clark. PO Clark was closest to the outer door that leads outside. § 87(2)(b) was on the left side of the enclosed space, while PO Clark was near the door, on the right side. PO Dress was next to § 87(2)(b).

§ 87(2)(b) stated that § 87(2)(b) seemed anxious and frustrated. It was § 87(2)(b)'s impression that this incident had begun some time before. The officers and § 87(2)(b) were all speaking in elevated tones of voice. PO Dress was telling § 87(2)(b) that they were not done with her, that she was not going anywhere. § 87(2)(b) several times stated that she had to leave to get her child. She also told the officers that she had nothing more to tell them. PO Clark told § 87(2)(b) that she was making things worse. It was § 87(2)(b)'s impression that the two officers were trying to get information from § 87(2)(b) that she was not providing them. § 87(2)(b) then stated that she was leaving, and she made a motion forward, towards the door going out. When she made this motion both officers approached § 87(2)(b). PO Dress stated that § 87(2)(b) was really making it worse. PO Dress grabbed § 87(2)(b)'s hands and moved them to her back, then handcuffed § 87(2)(b). The officers did not strike § 87(2)(b). § 87(2)(b) did not see the officers push § 87(2)(b) against a wall or the doors. After § 87(2)(b) was handcuffed, § 87(2)(b) suggested that they go into the management office to speak. The group then moved and went into the management office, with the door closing behind them. § 87(2)(b) witnessed no more of the incident. She left the building after that moment.

§ 87(2)(b) stated that at the time of the incident she did not know the reason for the incident. After the incident, upon speaking to other individuals in the building, she has been told that a tenant had called the police after an air conditioning unit of hers was disposed of.

#### **Attempt to contact witness – § 87(2)(b)**

According to all the available testimony, § 87(2)(b) participated in the encounter between § 87(2)(b) and Officers Dress and Clark on December 27, 2005. § 87(2)(b) was contacted telephonically first on January 21, 2006 and stated that she did not wish to get involved in the investigation. § 87(2)(b) was contacted again on March 22, 2006 and asked if she would participate, and again stated she did not want to participate in the investigation. § 87(2)(b) was contacted again on May 26, 2006 (encl. 15) and asked if she would participate in the investigation. § 87(2)(b) again refused. § 87(2)(b) stated that the incident had not occurred the way § 87(2)(b) had described it, and feared that any statement

she gave would become known to § 87(2)(b) which would make it difficult for her to work with § 87(2)(b) § 87(2)(b)

#### **Officer Statements – PO Robert Dress**

PO Robert Dress is a White male, 170 pounds, 5'9", with brown eyes and a shaved head. On December 27, 2005 PO Dress was assigned to the 32<sup>nd</sup> Precinct. He was working a 1500 by 2335 tour, assigned to patrol sectors IJ with PO Clark. PO Dress was uniformed and riding an RMP. In his memo book (encl. 16) PO Dress wrote: "1623: 10-22 § 87(2)(b) 4D. 1700: 91." In the stop and frisk report prepared by PO Dress after the incident (encl. 17) PO Dress stated that § 87(2)(b) was stopped because of her "furtive movements, actions indicative of engaging in a violent crimes", and other "suspicion of criminal activity", specifically "evasive movements, pushing an officer". PO Dress indicated that officers placed their hands on and handcuffed § 87(2)(b) PO Dress indicated that § 87(2)(b) was frisked because of her "furtive movements, actions indicative of a violent crime", and "refusal to comply with officer's directions leading to a reasonable fear for their safety." PO Dress indicated that § 87(2)(b) was also searched because of "other reasonable suspicion of a weapon", which he specified as "pushing an officer, and her giving permission to obtain her identification." PO Dress indicated that there were additional reasons for stopping § 87(2)(b) such as "proximity to crime location, evasive, false, or inconsistent responses to officer's questions, and changing direction at the sight of officers or flight." PO Dress was interviewed by the CCRB on March 13, 2006 (encl. 18).

The officers received a call indicating a larceny in progress, an air conditioner being stolen, at § 87(2)(b) § 87(2)(b) When they arrived they spoke with the complainant who was at the lobby. The complainant told PO Dress that she has left her AC out in the hallway while she cleaned up her apartment and that the unit had been taken. She told the officer she believed it might be in another room, or possibly taken by building personnel. The complainant told them she had spoken with the building manager earlier and the manager would not help her and the complainant suspected the manager knew something. The complainant led them to the office of the building manager, who was leaving her office with a coworker. According to PO Dress the manager was shutting the blinds, turning the lights off in her office, and would not speak to the officers inside her office. They had knocked on the door and she would not let them into the office and had to wait for her to exit the office to speak with her. The officers asked the manager questions, they wanted to ask her if she had information as to who might have been working on the floor at that time and tried to inquire if building personnel had removed the unit, perhaps for safekeeping. The building manager at this time was evasive, screaming and telling the officers she would not answer their questions and she stated she was leaving work. Then she tried to leave the building out the emergency exit.

PO Dress stated initially that they stopped the building manager from leaving the building when the manager got to the emergency exit doors. PO Dress stated that his reasons for stopping the building manager were her refusal to speak to them in her office, statements by the complainant that building manager had not been helpful earlier, and statements by the complainant that she suspected the manager knew something but was not speaking made him suspicious. Under questioning PO Dress stated both that the manager had been stopped, and that she was free to leave the building at that time. The building manager then pushed PO Dress trying to get back into the building. PO Dress could not recall the exact nature of the push, but he remembered that the building manager placed both her hands on him, in the vicinity of his gun. PO Dress then handcuffed the building manager. The manager was not frisked or searched.

The manager was taken back into the building office. At the office her coworker spoke to the manager to calm her down, and the officers explained again the situation. PO Dress remembered asking the manager for identification, and stated the manager produced identification herself. PO Dress did not question the building manager further about the initial complaint. PO Dress does not recall where the handcuffs were removed exactly, but thinks that perhaps she was released from the handcuffs near the emergency exit before the manager exited the building. PO Dress stated that he released the building manager because she had calmed down. PO Dress also stated that the manager was released because the complainant had come to an agreement with the building manager that they would discuss the air conditioning unit the next day. PO Dress stated that the complainant did not enter the office at any time. He did not recall seeing the complainant speak to the manager, and PO Dress stated that the manager left the building once she was released from the handcuffs. PO Dress does not recall whether he conducted any further investigations into the initial complaint after the building manager left. He did not recall how much

time after the building manager left the building he was at § 87(2)(b) he does recall speaking the complainant again before leaving. At some time during the day, PO Dress does not recall exactly when, he saw the building manager at the precinct. He had no interaction with her at the precinct. PO Dress stated that a UF250 was filed for the incident.

At the time of PO Dress's interview, the CCRB did not have the UF250 in hand and PO Dress did not have a copy with him. On PO Dress's memo book, then available to the CCRB, there was no indication a UF250 had been written for this incident. § 87(2)(g)

#### **Officer Statement – PO Melissa Clark**

PO Melissa Clark is a § 87(2)(b) old Black female, 5'4", 170 pounds, with brown hair and eyes. On December 27, 2005 PO Clark worked at the 32<sup>nd</sup> Precinct. She was working a 1500 by 2335 tour, assigned to patrol sectors IJ with PO Dress. Both officers were uniform, and were riding in RMP#1580. In her memo book (encl. 19) PO Clark wrote the following: "1623:10-22 @ 410 StN #4A. 1710: 91/93Q." PO Clark was interviewed by the CCRB on August 16, 2006 (encl. 20).

At 1623 Hours PO Clark and PO Dress received a call of a 10-22, past larceny, at § 87(2)(b). The officers arrived at the building and went upstairs to speak with the complainant. The complainant told the officers that she had put out an air conditioning unit out in the hallway and someone took the air conditioner away and the complainant stated that it had to be a member of the custodial staff who worked on that floor. The complainant had gone to speak to the manager, but she had not been given good treatment.

The officers went downstairs with the complainant to the management office. When the officers got there they could see that the door was open, the lights were on, and there were two women inside, the manager and her assistant behind their desks. PO Clark knocked on the door and asked to speak to the manager, and manager came, told her one minute, then closed the door. After a couple of minutes the manager came out again, then turned out the lights and locked the door again. Her assistant did not come out of the office with the manager. When the manager saw the complainant, she began to yell about the complainant, saying that she was a troublemaker in the building, saying that she did not want to say anything to the officers, that whatever they were there for, she [the manager] had nothing to do with it. The complainant began to yell back at the manager, causing people to come look, including building security. PO Clark asked the complainant to leave the scene to calm the situation down. The manager continued to state she would not be involved, and also mentioned that she had to go pick up her daughter. PO Clark stated that it was not her intention to detain the manager to answer questions; the manager would have been free to leave if she did not want to answer questions. At this point the manager was still in front of the door to her office, with the officers near the exit door. The manager then tried to push past PO Dress to get to the exit doors. She pushed PO Dress on his gunbelt area, near his gun, and moved PO Dress to the side. The manager tried to walk by PO Dress but did not get very far. PO Dress moved the manager's hand away from his gun area, and PO Clark asked her to stop and speak with them. PO Clark stated that if the manager had continued to walk out of the building after this push of PO Dress, she would have asked her to stop, but would not have taken actions to stop her had she not complied. The manager stopped, and PO Clark told it her it was not necessary to push and officer, and warned her not to do it again. The manager continued to yell, and at some point during this exchange the assistant came out of the office, and PO Clark asked the assistant if the manager had some emotional problems. The assistant stated that the manager was simply upset. The assistant was telling the manager to relax.

The manager again pushed PO Dress, this time in the chest. After the second push, the officers decided to handcuff the manager. PO Dress grabbed the manager to handcuff her, but the manager flailed her arms, so PO Clark had to help PO Dress by grabbing one of the manager's arms, so that they could handcuff the manager. PO Clark stated that the officers did not push the manager against a wall. PO Clark frisked the manager after she was handcuffed. PO Clark stated that the demeanor of the manager made her fear for her safety. PO Clark stated that there was no indication from the manager's behavior that she had a weapon. The security guard and a small crowd gathering. PO Dress asked the assistant if she could be taken back into their office, to help calm the manager down. The group went back into the office, and the manager began to calm down some. PO Clark asked for the manager's name, but she would not give it. PO Clark asked if the woman had a wallet with identification in it, and the manager said yes. PO Clark asked if she could go into the manager's pocketbook to get it. The manager consented, and PO Clark got the wallet

and opened it in front of the manager. She did not go through anything else in the pocketbook. Once PO Clark had the ID, she explained to the manager that they were there to ask her some questions, and the manager did not have to answer if she did not want to, but her behavior and pushing of a police officer is why she was in handcuffs. PO Clark explained that if she calmed down, the officer would not have to arrest her. PO Clark stated that she had not yet asked any questions about the air conditioning unit, and by this time PO Clark stated she realized the manager did not want to answer any question about the original complaint. PO Clark stated that she did not recall if PO Dress asked any question to the manager about the original complaint at any time during the incident.

The manager calmed down, and then the officers walked the manager out of the building and released her from the handcuffs near the doors. Once released the manager began to speak about the incident, stating again that the complainant gave her problems all the time. PO Clark then returned and spoke with the complainant. PO Clark stated that she did not see the complainant speak with the manager again at the scene. PO Clark stated that she was at the scene for about 1628 to 1710. PO Clark stated that she saw the manager at the station house later that day. The manager tried to speak to PO Clark, but PO Clark advised her to speak with her supervisor. PO Clark stated that PO Dress filed a UF250 about the incident.

### **Police Communication records**

According to the records of the 911 call § 87(2)(b) called the police from § 87(2)(b) to report that her air conditioner had been taken, and that management was saying it was not building personnel, but only building personnel could have done it. Police radio recordings show that 321da responded to a 10-22 call from § 87(2)(b) Thirty-nine minutes later, 321da stated that the call had been resolved as a 91. (Encl. 21)

### **Police Documents**

The finalized roll call from the 32<sup>nd</sup> Precinct for tour 3 shows that PO Dress and PO Clark were assigned to patrol sectors IJ in RMP1580. The initial response from the 32<sup>nd</sup> Precinct to the request for a stop and frisk report for § 87(2)(b) came back negative (encl. 22B, 28A). The 32<sup>nd</sup> Precinct subsequently sent the Patrol Borough Manhattan North Stop and Frisk log for the 32<sup>nd</sup> Precinct for December 27, 2005 shows that a UF250 was prepared for a stop of § 87(2)(b) at 1625 at § 87(2)(b) (Encl. 22A, 28B)

### **Subject Officers CCRB Complaint History**

PO Clark and PO Dress have had no allegations substantiated against them that resulted in the imposition of discipline. (Encl. 2-3)

### **Civilian Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## **Conclusions and Recommendations**

### **Officer Identification**

§ 87(2)(b) described PO1 as a White male officer, around 5'6", 175 pounds, with very light skin, small eyes, and a shaved head. She described PO2 as a Black female, around 5'5", chubby, and red hair. § 87(2)(b) stated that PO1 and PO2 stopped her, and stated that it was PO2 that then frisked and searched her bags. § 87(2)(b) stated that she pointed out the two officers she was complaining about in the precinct for the officer writing the complaint. The complaint report written at the precinct identified Officers Dress and Clark as the subject officers. No other officers were found to have been present at the scene. PO Dress is a White male, 5'9", 170 pounds, with brown eyes and a clean-shaved head. PO Clark is a Hispanic female of dark complexion, 5'4", 170 pounds, with brown hair. § 87(2)(g)

§ 87(2)(g)

### Undisputed Facts

PO Clark and PO Dress responded to § 87(2)(b) on a complaint about a missing air conditioner. They went to question the building manager, § 87(2)(b) who was leaving work at that time along with her coworker § 87(2)(b) told the officers she did not know who had taken the air conditioner. At one point she tried to leave the building, but officer prevented her from leaving. PO Dress and PO Clark handcuffed § 87(2)(b) The officers and civilians returned to the managers' office. The officers took § 87(2)(b)'s information and released her.

### Disputed Facts

§ 87(2)(g)

### Credibility Assessment

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) PO Dress was interviewed just three months after the incident. PO Dress stated that § 87(2)(b) was neither frisked nor searched, and stated that he had filed a UF250 report about the incident. When the 32<sup>nd</sup> Precinct finally sent back the UF250 report, the report stated she was frisked and searched, and provided multiple reasons for both actions. § 87(2)(g)

§ 87(2)(g)



§ 87(2)(g)

§ 87(2)(g)

**Allegation A: PO Robert Dress stopped and questioned** § 87(2)(b)

**Allegation B: PO Melissa Clark stopped and questioned** § 87(2)(b)

§ 87(2)(g)

According to Kamins pg. 2-50, an officer must have “a reasonable suspicion that a person is committing, has committed, or is about to commit a crime”, and the courts have stated that the officer must have “a particularized and objective basis for suspecting the particular person of criminal activity” to be able to forcibly stop someone, either by preventing their ability to move from the scene, or handcuffing them.

§ 87(2)(g) PO Clark stated that § 87(2)(b) was forcibly stopped and handcuffed for twice pushing PO Dress. PO Dress on the other hand stated that the reason for stopping § 87(2)(b) was her failure to adequately answer his questions about the air conditioner. In the UF250 PO Dress went on to state that he effected the stop of § 87(2)(b) because of her “proximity to the crime location”, “Evasive, False, or Inconsistent Response to officer questions”, and “changing directions at sight of officers.” § 87(2)(g)

The officers arrived to investigate a complaint that an air conditioner had been taken. The tenant who made the complaint told the officers that § 87(2)(b) might have knowledge of who had taken the air conditioner, but neither of the officers stated that the tenant had accused § 87(2)(b) of any crime. § 87(2)(g)

PO Clark stated that the push was the sole reason for stopping § 87(2)(b) and both officers stated that the alleged push was the reason for handcuffing § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

It should also be noted that, as discussed in Kamin's pg. 2-131, suspects have a right to reject an unlawful encounter. In the cases discussed in Kamins officers arrested individuals who had assaulted them, but convictions were overturned, or evidence suppressed because it had been found that officers were illegally restraining or stopping these individuals prior to them attacking the officers. § 87(2)(g)

As noted in *PD vs. Dowd and Rose*, in order to find misconduct on the part of the officers occurred in this case, bad faith on the part of the officers must be shown to have existed. § 87(2)(g)

§ 87(2)(g)

#### **Allegation C: PO Melissa Clark frisked § 87(2)(b)**

In her testimony § 87(2)(b) stated that she was frisked by PO Clark after being handcuffed. PO Clark stated that she frisked § 87(2)(b) after she was handcuffed. PO Dress in his testimony stated that no frisk had occurred, yet on the UF250 he prepared he stated that § 87(2)(b) was frisked, and gave a variety of reasons why § 87(2)(g)

According to Kamins, pg. 2-82, the power to stop and frisk an individual exists when an officer "reasonably suspects that he is in danger of physical injury, he may search such a person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury..." In page 2-87 it is noted that in addition to the reasonable suspicion justifying the stop the officer must have an independent and reasonable suspicion the individual is dangerous and armed. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D: PO Melissa Clark searched § 87(2)(b)**

In her testimony § 87(2)(b) stated that her bag was searched by PO Clark as she looked for identification. PO Clark stated that she reached into § 87(2)(b)'s bag after § 87(2)(b) indicated she had identification in her bag. PO Dress in his testimony stated that no search occurred, yet on the UF250 he prepared he stated that § 87(2)(b) was searched, and it stated that the reason was other reasonable suspicion of a weapon, specified as “push against officer near firearm” and “permission to obtain ID.” § 87(2)(g)

In *PD vs. Lynch* (August 2005) the OATH court found that an officer had been guilty of misconduct when searching the pockets of an individual for identification after taking the person into custody. The court found that at the time of the search the officer was holding the individual without the intention to arrest them, and was thus operating under a level two common right of inquiry level stop. Under that level of intrusion the officer could only search the individual to identify them with consent from the individual. § 87(2)(g)

PO Clark testified that she sought and gained § 87(2)(b)'s consent in searching the bag for the purpose of obtaining identification. While PO Dress stated in his testimony that no search occurred and that § 87(2)(b) produced identification of her own, the UF250 he prepared noted that § 87(2)(b) was searched, and he noted that one of the reasons is that the complainant provided permission to obtain ID. § 87(2)(b) herself stated that she told PO Clark that her ID was in her bag as PO Clark frisked her, after she had been asked for identification. § 87(2)(g)

§ 87(2)(g)

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
Reviewed by:	Date: